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14

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

17 UNITED STATES OF AMERICA, )

18 Plaintiff, )

19 v. )

20 )  
21 SEVEN-UP/RC BOTTLING  
22 COMPANY OF SOUTHERN  
CALIFORNIA, INC., )

23 Defendant. )  
24  
25  
26  
27  
28

Civil No.

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

1 The United States of America, by and through the undersigned attorneys, by  
2 the authority of the Attorney General of the United States and at the request of and  
3 on behalf of the United States Environmental Protection Agency ("EPA"), alleges  
4 the following:

5 STATEMENT OF THE CASE

6 1. This is a civil action for civil penalties and injunctive relief brought  
7 pursuant to section 309(b) and (d) of the Clean Water Act (the "CWA" or "Act"),  
8 33 U.S.C. § 1319(b) and (d), against Seven-Up/RC Bottling Company of Southern  
9 California, Inc. ("Seven-Up" or "Defendant") for violations of the Act's  
10 requirements governing the discharge of storm water and non-storm water as well  
11 as pretreatment requirements.

12 2. Authority to bring this action is vested in the United States  
13 Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and section 506 of  
14 the Act, 33 U.S.C. § 1366.

15 JURISDICTION AND VENUE

16 3. This Court has jurisdiction over the subject matter of this action  
17 pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and section 309(b) of the Act, 33  
18 U.S.C. § 1319(b).

19 4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and  
20 (c), 1395(a), and section 309(b) of the Act, 33 U.S.C. § 1319(b), because the  
21 violations alleged in this Complaint occurred in this district, and because  
22 Defendant resides in this district.

23 5. The United States has notified the State of California of the  
24 commencement of this action in accordance with section 309(b) of the Act, 33  
25 U.S.C. § 1319(b).

26 DEFENDANT

27 6. Seven-Up is a Delaware corporation with its headquarters located at  
28 3220 E. 26<sup>th</sup> Street in Vernon, California (the "Vernon Facility"). Seven-Up is a

1 “person,” as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).

## 2 STATUTORY AND REGULATORY AUTHORITY

3 7. The objective of the Act is to restore and maintain the chemical,  
4 physical, and biological integrity of the Nation’s waters. 33 U.S.C. § 1251(a).

### 5 NPDES Permit Program

6 8. To accomplish the objective of the Act, CWA section 301(a), 33  
7 U.S.C. § 1311(a), prohibits the discharge of pollutants to any waters of the United  
8 States by any person except in compliance with specific sections of the Act,  
9 including CWA section 402, 33 U.S.C. § 1342.

10 9. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National  
11 Pollutant Discharge Elimination System (“NPDES”) permit program. Under  
12 section 402, a State with an EPA-approved NPDES program may issue permits,  
13 including storm water permits, governing the discharge of pollutants from  
14 regulated sources. Thus, compliance with CWA section 301(a) requires  
15 compliance with an applicable NPDES permit.

### 16 Storm Water Discharges

17 10. CWA section 402(p), 33 U.S.C. § 1342(p), establishes a framework  
18 for regulating storm water discharges under the NPDES program. Under section  
19 402(p) and EPA’s implementing regulations at 40 C.F.R. § 122.26, the discharge  
20 of storm water associated with industrial activity must have NPDES permit  
21 authorization. Facilities within categories specified by 40 C.F.R. § 122.26(b)(14),  
22 including those in Standard Industrial Classification (“SIC”) 20 (food and kindred  
23 industry), 40 C.F.R. § 122.26(b)(14)(xi), are considered to be engaged in  
24 “industrial activity” and must obtain storm water permit authorization.

25 11. Under 40 C.F.R. § 122.26(c), facilities that discharge storm water  
26 associated with industrial activity must either apply for an individual permit or  
27 seek coverage under a promulgated storm water general permit. EPA set the  
28 regulatory deadline for filing for such permit as October 1, 1992, 40 C.F.R.

1 § 122.26(e), which extended the deadline of no later than February 4, 1990, set by  
2 CWA section 402(p)(4)(A), 33 U.S.C. § 1342(p)(4)(A).

3 12. The State of California has an EPA-approved NPDES program and  
4 issues permits, including storm water permits, through its State Water Resources  
5 Control Board (“State Board”) and nine Regional Water Quality Control Boards  
6 (“Regional Boards”). Since 1991, the State Board has adopted two successive  
7 statewide NPDES General Permits for Discharges of Storm Water Associated with  
8 Industrial Activities Excluding Construction Activities. The current permit,  
9 General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (“General  
10 Permit”), was adopted on April 17, 1997.

11 13. To obtain permit coverage, an industrial facility must file a “Notice of  
12 Intent” (“NOI”) with the State Board. Under the General Permit, an existing  
13 facility should have either submitted an NOI or applied for an individual NPDES  
14 permit in 1992.

15 14. The General Permit requires a facility operator to control pollutants  
16 discharged to waters of the United States by: (1) eliminating all unauthorized non-  
17 storm water discharges (General Permit, Order A); (2) developing and  
18 implementing a detailed, site-specific storm water pollution prevention plan  
19 (“SWPPP”) with appropriate best management practices (“BMPs”) (General  
20 Permit, Order B.3 and Section A); and (3) developing and implementing a  
21 detailed, site-specific monitoring program (General Permit, Section B).

22 15. The General Permit, Order B.3, requires each facility operator to  
23 reduce or prevent pollutants associated with industrial activity in storm water  
24 discharges and authorized non-storm water discharges using best available  
25 technology economically achievable (“BAT”) for toxic pollutants and best  
26 conventional pollutant control technology (“BCT”) for conventional pollutants.  
27 Development and implementation of an SWPPP that: (1) complies with  
28 requirements of General Permit, Section A, and (2) includes BMPs that achieve

1 BAT and BCT, constitutes compliance with these effluent limitations. Id. An  
2 SWPPP is “a written document that shall contain a compliance activity schedule, a  
3 description of industrial activities and pollutant sources, descriptions of BMPs,  
4 drawings, maps, and relevant copies or references of parts of other plans.”  
5 General Permit, Section A.2. Under General Permit, Section A.1, the operator of  
6 an existing facility shall develop and implement an SWPPP no later than October  
7 1, 1992.

8 16. Section B of the General Permit requires each facility operator to  
9 develop and implement a written, facility-specific monitoring program that  
10 contains specific elements and is capable of indicating the presence of pollutants  
11 associated with industrial activity in storm water discharges, determining  
12 compliance with permit requirements, aiding the implementation and revision of  
13 the SWPPP, and measuring the effectiveness of the BMPs. Under General Permit,  
14 Section B.1, the operator of an existing facility shall develop and implement a  
15 monitoring program no later than October 1, 1992.

16 17. Section C.1 of the General Permit requires each facility operator to  
17 comply with all the conditions of the General Permit. Any failure to comply with  
18 the General Permit constitutes a violation of the Act and is grounds for an  
19 enforcement action.

#### 20 Pretreatment Program

21 18. Section 307 of the CWA, 33 U.S.C. § 1317, establishes the federal  
22 pretreatment program for regulating the introduction of wastewater from non-  
23 domestic sources into publicly owned treatment works (“POTW”). For purposes  
24 of CWA section 307, the term POTW includes the municipal wastewater treatment  
25 plant or works (including the reclamation plant) and its tributary sewer or  
26 conveyance systems. 40 C.F.R. § 403.3(o).

27 19. CWA section 307(d), 33 U.S.C. § 1317(d), prohibits the introduction  
28 of industrial pollutants into a POTW in violation of any pretreatment standards

1 established pursuant to CWA section 307(b), 33 U.S.C. § 1317(b).

2 20. CWA section 307(b), 33 U.S.C. § 1317(b), directs EPA to publish  
3 regulations to establish pretreatment standards governing the introduction of  
4 industrial pollutants into POTWs. Pursuant to CWA section 307(b), EPA  
5 promulgated “General Pretreatment Regulations for Existing and New Sources of  
6 Water Pollution” at 40 C.F.R. Part 403. The General Pretreatment Regulations at  
7 40 C.F.R. § 403.5 include national standards that prohibit certain discharges from  
8 all “industrial users,” i.e., non-domestic sources regulated under CWA section 307  
9 that introduce pollutants into a POTW. 40 C.F.R. §§ 403.1(b)(1), 403.3(h).

10 21. Under 40 C.F.R. § 403.5(b)(2), it is unlawful for an industrial user to  
11 introduce into a POTW pollutants that “will cause corrosive structural damage to  
12 the POTW, but in no case Discharges with pH lower than 5.0, unless the  
13 [treatment] works is specially designed to accommodate such Discharges.” A  
14 violation of the low pH prohibition at 40 C.F.R. § 403.5(b)(2) is a violation of  
15 CWA section 307(d), 33 U.S.C. § 1317(d).

16 22. The Orange County Sanitation District (“OCSD”) owns and operates  
17 the OCSD Wastewater Reclamation Plant #1 and Wastewater Treatment Plant #2  
18 (collectively “OCSD Treatment Plants”). The OCSD Treatment Plants and their  
19 tributary sewer systems are all POTWs under 40 C.F.R. § 403.3(o) and CWA  
20 section 307.

#### 21 CWA Enforcement Authority

22 23. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the  
23 Administrator of EPA to commence a civil action for appropriate relief, including  
24 a permanent or temporary injunction, when any person is in violation of sections  
25 301 or 307 of the Act, 33 U.S.C. §§ 1311, 1317, among other provisions, or of any  
26 permit condition or limitation implementing CWA section 301 and set forth in  
27 permits issued under CWA section 402, 33 U.S.C. § 1342.

28 24. Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19,

1 provide, in part, that any person who violates sections 301 or 307 of the Act, 33  
2 U.S.C. §§ 1311, 1317, or of any condition or limitation implementing CWA  
3 section 301 and set forth in permits issued under CWA section 402, 33 U.S.C.  
4 § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for each  
5 violation occurring after March 15, 2004, and \$27,500 per day for each violation  
6 occurring between January 31, 1997, and March 15, 2004.

#### 7 GENERAL ALLEGATIONS

8 25. Seven-Up owns and operates approximately a dozen bottling,  
9 warehousing, and distribution facilities in California, Nevada, and New Mexico.

#### 10 Vernon Facility

11 26. Seven-Up owns and operates a soft drink bottling facility at the  
12 Vernon Facility, a 22.77-acre site on the bank of the Los Angeles River.

13 27. The Los Angeles River is a water of the United States under 40  
14 C.F.R. § 122.2, which implements CWA section 502(7), 33 U.S.C. § 1362(7).

#### 15 Non-storm Water Violations at the Vernon Facility

16 28. Seven-Up has never applied for or received NPDES authorization for  
17 non-storm water discharges from the Vernon Facility to any waters of the United  
18 States.

19 29. Based on information and belief, Seven-Up's Vernon Facility  
20 discharged, without a permit, industrial wastes such as petroleum, lubrication oil,  
21 hydraulic oil, grease, and off-specification carbonated drinks, all pollutants within  
22 the meaning of sections 301(a) and 502(6) of the Act, 33 U.S.C. §§ 1311(a) and  
23 1362(6), to the Los Angeles River on or about the following dates: September 1,  
24 2002, September 30, 2002, October 22, 2002, November 8, 2002, December 5,  
25 2002, and January 22, 2003.

#### 26 Storm Water Violations at the Vernon Facility

27 30. Identified by SIC 2068, the Vernon Facility is an industrial facility for  
28 purposes of CWA section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b),

1 and is required by the CWA to obtain permit authorization for storm water  
2 discharges associated with its industrial activities.

3 31. Seven-Up did not seek any storm water permit for the Vernon Facility  
4 until December 31, 2002, when it filed an NOI under the General Permit. It  
5 obtained General Permit coverage on January 8, 2003. Therefore, prior to January  
6 8, 2003, all storm water discharges associated with the industrial activities at the  
7 Vernon Facility were without NPDES permit authorization. After January 8,  
8 2003, until Seven-Up properly implemented the required SWPPP and BMPs, all  
9 storm water discharges are in violation of the General Permit.

10 32. On May 27, 2003, staff from EPA Region 9 and the Los Angeles  
11 Regional Board, joined in part by staff from the Los Angeles County Department  
12 of Public Works, inspected the Vernon Facility to evaluate Seven-Up's  
13 compliance with the General Permit. Based on the inspection, a variety of  
14 industrial activities, including, but not limited to, the loading, transportation,  
15 storage and/or handling of raw materials, products, byproducts, waste materials,  
16 and the storage and maintenance of industrial equipment, take place at the Vernon  
17 Facility's uncovered outdoor areas. The Vernon Facility also contains a network  
18 of man-made swales and channels that collects and drains surface runoffs from the  
19 Facility into the Los Angeles River.

20 33. Seven-Up has failed to take adequate measures to reduce or prevent  
21 pollutant sources associated with the outdoor industrial activities at the Vernon  
22 Facility from entering into the Facility's storm water collection system or the Los  
23 Angeles River. The following deficiencies were observed during the inspection  
24 on May 27, 2003:

- 25 a. Exposed old and/or obsolete equipment such as forklifts and machine  
26 parts stored behind the maintenance building;
- 27 b. Exposed and/or leaking truck rigs near the storm water swale leading  
28 to the Los Angeles River;



- c. Leaking pipe in the berm surrounding the cooling tower;
- d. High levels of wastewater in one of the three clarifier chambers that threatened to overflow into the Vernon Facility's storm water collection system; and
- e. Lack of secondary containment system to prevent leaks or spills from the chemical containers stored in the back alley of the Vernon Facility.

34. Based on information and belief, on at least 53 days between March 2000 and March 2003, Seven-Up's Vernon Facility discharged, without or in violation of a permit, storm water associated with industrial activity, a pollutant within the meaning of sections 301(a) and 502(6) of the Act, 33 U.S.C. §§ 1311(a) and 1362(6), to the Los Angeles River.

35. Pursuant to the General Permit, Order B.3 and Section A.1, Seven-Up should have developed and implemented an SWPPP, including the necessary BMPs to achieve BAT and BCT, for the Vernon Facility at the time of permit coverage. Although Seven-Up obtained General Permit coverage for the Vernon Facility on January 8, 2003, it did not develop an SWPPP until on or about June 30, 2003, and has failed to implement appropriate BMPs to achieve BAT and BCT at the Vernon Facility.

36. Pursuant to the General Permit, Section B, Seven-Up should have developed and implemented a monitoring program for the Vernon Facility at the time of permit coverage. Although Seven-Up obtained General Permit coverage for the Vernon Facility on January 8, 2003, it did not develop a monitoring program until on or about June 30, 2003, and failed in 2003 to comply with the following General Permit, Section B, requirements:

- a. conduct quarterly visual observations for, and document the presence of, both authorized and unauthorized non-storm water discharges as required by General Permit, Section B.3;

- 1           b.     conduct visual observations of storm water discharges from one storm  
2                   event per month during the wet season and to document the presence  
3                   of pollutants in the discharges as required by General Permit, Section  
4                   B.4;
- 5           c.     collect and analyze samples of storm water discharges as required by  
6                   General Permit, Sections B.5, 7, and 10; and
- 7           d.     keep records of all storm water monitoring information as required by  
8                   General Permit, Section B.13.

9                                   Buena Park Facility

10           37.    Seven-Up owns and operates a soft drink bottling facility at 7225  
11   Orangethorpe Avenue, Buena Park, California (the "Buena Park Facility"), which  
12   occupies a five-acre site with two buildings and outdoor industrial areas. The site  
13   is bounded to the west by the Melrose Channel. Approximately 1/16 mile from  
14   the Buena Park Facility, the Melrose Channel joins Fullerton Creek, which flows  
15   to Coyote Creek, the San Gabriel River, and the Pacific Ocean, all "waters of the  
16   United States" under 40 C.F.R. § 122.2 and CWA section 502(7), 33 U.S.C.  
17   § 1362(7).

18                                   Non-storm Water Violations at the Buena Park Facility

19           38.    Seven-Up has never applied for or received NPDES permit  
20   authorization for any non-storm water discharges from the Buena Park Facility to  
21   any waters of the United States.

22           39.    Based on information and belief, Seven-Up's Buena Park Facility  
23   discharged, without a permit, boiler-related industrial wastes, all pollutants within  
24   the meaning of sections 301(a) and 502(6) of the Act, 33 U.S.C. §§ 1311(a) and  
25   1362(6), to the Melrose Channel on at least three days in April 2004.

26                                   Storm Water Violations at the Buena Park Facility

27           40.    Identified by SIC 2068, the Buena Park Facility is an industrial  
28   facility for purposes of CWA section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R.

§ 122.26(b), and is required to obtain permit authorization for storm water discharges associated with the Buena Park Facility's industrial activities.

41. Seven-Up did not seek any storm water permit for the Buena Park Facility until September 5, 2003, when it filed an NOI under the General Permit. It obtained General Permit coverage on September 11, 2003. Therefore, prior to September 11, 2003, all storm water discharges associated with the industrial activities at the Buena Park Facility were without NPDES permit authorization. After September 11, 2003, until Seven-Up properly implemented the required SWPPP and BMPs, all storm water discharges are in violation of the General Permit.

42. On July 28, 2003, staff from EPA Region 9, the Santa Ana Regional Board, and the City of Buena Park inspected the Buena Park Facility to evaluate compliance with the CWA storm water requirements. Based on that inspection, a variety of industrial activities, including, but not limited to, the loading, transportation, storage and/or handling of raw materials, products, byproducts, and waste materials, and the storage and maintenance of industrial equipment, take place at the Buena Park Facility's uncovered outdoor areas. The Buena Park Facility also has a network of drains that collects and channels surface runoff from the Buena Park Facility to the Melrose Channel and Fullerton Creek.

43. Seven-Up has failed to take adequate measures to reduce or prevent pollutant sources associated with the Buena Park Facility's outdoor industrial activities from entering into the Buena Park Facility's surface water collection system, the Melrose Channel, or Fullerton Creek. The following deficiencies were noted during the inspection on July 28, 2003:

- a. inadequate containment of wastewater and spills associated with the can crushing activities in the back lot and industrial process areas near the driveway;
- b. exposure of industrial materials and manufacturing equipment stored

1 throughout the back lot;

2 c. tracking of wastes by trucks; and

3 d. presence of a piping system for the discharge of wastewater from the  
4 truck loading area directly into the Melrose Channel.

5 44. On November 5, 2003, EPA Region 9, the Santa Ana Regional Board,  
6 and the OCSD conducted a follow-up inspection of the Buena Park Facility.  
7 Among the deficiencies and pollutant sources associated with the Buena Park  
8 Facility's industrial activities that were noted during the follow-up inspection  
9 were:

10 a. lack of any observable improvement of the outdoor conditions present  
11 during the inspection on July 28, 2003;

12 b. storage of hazardous waste in a leaky metal spill container in the back  
13 lot; and

14 c. storage of used oil in uncovered 55-gallon drums in the back lot.

15 45. Based on information and belief, on at least 58 days between March  
16 2000 and December 2003, Seven-Up's Buena Park Facility discharged, without or  
17 in violation of a permit, storm water associated with industrial activity, a pollutant  
18 within the meaning of sections 301(a) and 502(6) of the Act, 33 U.S.C. §§ 1311(a)  
19 and 1362(6), to the Melrose Channel.

20 46. Pursuant to the General Permit, Order B.3 and Section A.1, Seven-Up  
21 should have developed and implemented an SWPPP, including the necessary  
22 BMPs to achieve BAT and BCT, for the Buena Park Facility at the time of permit  
23 coverage. Although Seven-Up obtained General Permit coverage for the Buena  
24 Park Facility on September 11, 2003, it did not develop an SWPPP until October  
25 26, 2003, and has failed to implement the SWPPP and the appropriate BMPs to  
26 achieve BAT and BCT at the Buena Park Facility.

27 47. Pursuant to the General Permit, Section B, Seven-Up should have  
28 developed and implemented a monitoring program for the Buena Park Facility at

1 the time of permit coverage. Although Seven-Up obtained General Permit  
2 coverage for the Buena Park Facility on September 11, 2003, it did not develop  
3 any monitoring program for the Buena Park Facility until October 26, 2003.

4 Pretreatment Violations at the Buena Park Facility

5 48. As part of its soft drink production processes, the Buena Park Facility  
6 generates and discharges to the sewer system tributary to the OCSD Treatment  
7 Plants approximately 89,000 gallons per day of industrial wastewater. As an  
8 OCSD industrial user, the Buena Park Facility is subject to the federal low pH  
9 prohibition in 40 C.F.R. § 403.5(b)(2).

10 49. From October 9 to November 4, 2003, the OCSD monitored the  
11 industrial wastewater effluent from the Buena Park Facility using an automatic  
12 continuous pH sampler. The analysis of the OCSD's pH samples showed that  
13 Seven-Up violated the federal low pH prohibition in 40 C.F.R. § 403.5(b)(2) and  
14 CWA section 307(d), 33 U.S.C. § 1317(d), by discharging low pH industrial  
15 wastewater from the Buena Park Facility to the OCSD sewer system on the  
16 following dates: October 10, October 11, October 12, October 13, October 14,  
17 October 15, October 16, October 17, October 18, October 19, October 20, October  
18 21, October 22, October 23, October 24, October 26, October 27, October 29, and  
19 October 30.

20 FIRST CLAIM FOR RELIEF  
21 Vernon Facility - Unauthorized Discharges

22 50. The allegations contained in Paragraphs 1 through 17 and 23 through  
23 34 are realleged and incorporated by reference herein.

24 51. Upon information and belief, Seven-Up discharged, without a permit,  
25 pollutants including industrial wastes from the Vernon Facility into waters of the  
26 United States on at least 6 days between September 1, 2002, and January 31, 2003.

27 52. Upon information and belief, Seven-Up discharged, without a permit  
28 or in violation of the General Permit, storm water associated with industrial

1 activity, a pollutant, from the Vernon Facility into waters of the United States on  
2 at least 53 days between March 2000 and March 2003.

3 53. Unauthorized discharges of pollutants to waters of the United States  
4 violates CWA section 301(a), 33 U.S.C. § 1311(a).

5 54. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R.  
6 Part 19, Defendant is subject to a civil penalty per violation per day not to exceed  
7 \$27,500 per day for each such violation occurring after January 31, 1997, through  
8 and including March 15, 2004, and not to exceed \$32,500 per day for each such  
9 violation thereafter.

10 SECOND CLAIM FOR RELIEF  
11 Vernon Facility - Violation of General Permit's Conditions

12 55. The allegations contained in Paragraphs 1 through 17, 23 through 27,  
13 and 3 through 36 are realleged and incorporated by reference herein.

14 56. Seven-Up violated the terms and conditions of the General Permit at  
15 its Vernon Facility.

16 57. Pursuant to Section C.1 of the General Permit and CWA section 309,  
17 33 U.S.C. § 1319, any failure to comply with the General Permit constitutes a  
18 violation of the Act.

19 58. Unless enjoined, these violations will continue or will recur at the  
20 Vernon Facility.

21 59. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R.  
22 Part 19, Defendant is subject to a civil penalty per violation per day not to exceed  
23 \$27,500 per day for each such violation occurring after January 31, 1997, through  
24 and including March 15, 2004, and not to exceed \$32,500 per day for each such  
25 violation thereafter.

26 THIRD CLAIM FOR RELIEF  
27 Buena Park Facility - Unauthorized Discharges

28 60. The allegations contained in Paragraphs 1 through 17, 23 through 25,

1 and 37 through 45 are realleged and incorporated by reference herein.

2 61. Upon information and belief, Seven-Up discharged, without a permit,  
3 pollutants including industrial wastes from the Buena Park Facility into waters of  
4 the United States on at least 3 days in April 2004.

5 62. Upon information and belief, Seven-Up discharged, without a permit  
6 or in violation of the General Permit, storm water associated with industrial  
7 activity, a pollutant, from the Buena Park Facility into waters of the United States  
8 on at least 58 days between March 2000 and December 2003.

9 63. Unauthorized discharges of pollutants to waters of the United States  
10 violates CWA section 301(a), 33 U.S.C. § 1311(a).

11 64. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R.  
12 Part 19, Defendant is subject to a civil penalty per violation per day not to exceed  
13 \$27,500 per day for each such violation occurring after January 31, 1997, through  
14 and including March 15, 2004, and not to exceed \$32,500 per day for each such  
15 violation thereafter.

16 **FOURTH CLAIM FOR RELIEF**  
17 **Buena Park Facility - Violations of General Permit's Conditions**

18 65. The allegations contained in Paragraphs 1 through 17, 23 through 25,  
19 37, and 40 through 47 are realleged and incorporated by reference herein.

20 66. Seven-Up violated the terms and conditions of the General Permit at  
21 its Buena Park Facility.

22 67. Pursuant to Section C.1 of the General Permit and CWA section 309,  
23 33 U.S.C. § 1319, any failure to comply with the General Permit constitutes a  
24 violation of the Act.

25 68. Unless enjoined, these violations will continue or will recur at the  
26 Buena Park Facility.

27 69. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R.  
28 Part 19, Defendant is subject to a civil penalty per violation per day not to exceed

1 \$27,500 per day for each such violation occurring after January 31, 1997, through  
2 and including March 15, 2004, and not to exceed \$32,500 per day for each such  
3 violation thereafter.

4 **FIFTH CLAIM FOR RELIEF**  
5 **Buena Park Facility - Violations of Pretreatment Requirements**

6 70. The allegations contained in Paragraphs 1 through 7, 18 through 22,  
7 37, 48, and 49 are realleged and incorporated by reference herein.

8 71. Between October 9 and November 4, 2003, Seven-Up discharged low  
9 pH wastewater from the Buena Park Facility to the OCSD sewer system in  
10 violation of 40 C.F.R. § 403.5(b)(2) and CWA section 307(d), 33 U.S.C.  
11 § 1317(d).

12 72. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R.  
13 Part 19, Defendant is subject to a civil penalty per violation per day not to exceed  
14 \$27,500 per day for each such violation occurring after January 31, 1997, through  
15 and including March 15, 2004.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, the United States, prays that this Court:

18 1. Order Defendant to comply with the terms of the Act and conditions  
19 of the General Permit at its facilities by developing and implementing an  
20 appropriate SWPPP and monitoring program for each facility, applying BMPs to  
21 minimize or eliminate discharges of pollutants from each facility, developing and  
22 implementing a pH compliance plan to achieve compliance with pH limits for  
23 wastewater discharges to any POTW, and implementing corporate policies  
24 designed to achieve and assure compliance with the General Permit and the Act;

25 2. Assess civil penalties against Defendant of up to \$27,500 per day for  
26 each violation occurring after January 31, 1997, through and including March 15,  
27 2004, and not to exceed \$32,500 per day for each such violation thereafter;

28 3. Award the United States its costs of this action; and



1           4.     Grant such other and further relief as this Court deems to be just and  
2 proper.

3                                 Respectfully submitted,  
4 FOR THE UNITED STATES OF AMERICA

5  
6                                 Kelly A. Johnson  
7                                 Acting Assistant Attorney General  
8                                 Environment and Natural Resources  
9                                 Division  
10                                Washington, D.C. 20530

11           Date: \_\_\_\_\_ By: \_\_\_\_\_

12                                 W. Benjamin Fisherow  
13                                 Deputy Chief  
14                                 Environmental Enforcement Section  
15                                 Environment and Natural Resources  
16                                 Division  
17                                 U.S. Department of Justice

18           Date: \_\_\_\_\_

19                                 Robert D. Mullaney  
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